

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA]	
]	
v.]	No. 05-CR-30042-MLW
]	
CESAR CRUZ and]	
RICARDO DIAZ]	

**GOVERNMENT’S OPPOSITION TO DEFENDANT RICARDO DIAZ’S MOTION FOR
LEAVE TO SUBPOENA PROBATE RECORDS RELATING TO CHILD SUPPORT**

The United States hereby submits this memorandum in opposition to defendant Ricardo Diaz’s (“DIAZ”) motion for leave to subpoena probate court records of Julian Rios.

Background

On April 20, 2006, the government produced to the defendants redacted copies of records relating to Mr. Rios’s failure to pay child support to two women, one of them being Alba Roman.¹ (A copy of the records related to Ms. Roman are attached at Tab 1.) The government does not concede their admissibility on cross examination of Mr. Rios, but of course produced the information once the government became aware of it.

DIAZ wishes to subpoena Mr. Rios’s entire probate record on the theory that, according to the documents produced by the government, Rios’s scheduled payments to Ms. Roman were so low (\$35 per week (\$140 per month)) that he may have deceived Massachusetts authorities about his current income, an issue that would go to his credibility. DIAZ states in his motion that the amount Rios has been ordered to pay “does not appear to comport with his incomes from his activities on behalf of the government as an informant.” Motion ¶ 2.

¹ The records were redacted to remove information revealing where Mr. Rios now lives.

Argument

DIAZ's motion should be denied, because there is no implication in the documents produced that Rios in fact misrepresented his income to probate authorities. As previously disclosed to defense counsel, Rios was released from prison, after 7½ years, in September 2004. The Federal Bureau of Investigation ("FBI") began paying Rios for living expenses, etc., while he assisted their investigations, in or about October 2004. Between October 2004 and April 10, 2006 – an 18 month period – Rios was paid \$42,956.21, or about \$28,640 a year. That is hardly high living and DIAZ has made absolutely no showing that, based on that yearly income, someone paying child support would normally be required to pay substantially more than \$140 per month. Moreover, according to the documents the government produced, Rios owed Ms. Roman a total of \$25,249.08 in support as of October 21, 2005, hardly an insubstantial figure.

Without some showing that the amounts Rios has been ordered to pay are unusually low considering his meager income, and especially considering the invasiveness of the request, the motion for leave should be denied. If the Court allows DIAZ to impeach Rios with his failure to make timely child support payments he certainly has sufficient information to do so without further review of Rios's private, sealed domestic matters. The government in no way alleges that counsel for DIAZ is acting in bad faith, but in light of what has already been disclosed, further review of Rios's probate record would be a fishing expedition. *See, e.g., United States v. Nixon*, 418 U.S. 683, 699 (1974) (formulating standard for allowing subpoena under Rule 17(c), including requiring relevance and admissibility; unavailability of information by other means; inability to prepare adequately for trial without the records sought; and showing that the request

is not “a fishing expedition”); *see also Stern v. U.S. Dist. Ct.*, 214 F.3d 4, 17 (1st Cir. 2000)
(citing *Nixon* in context of attorney subpoena by government).

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Andrew E. Lelling
Andrew E. Lelling
Sharron A. Kearney
Assistant U.S. Attorneys

Date: April 26, 2006

CERTIFICATE OF SERVICE

I, Andrew E. Lelling, Assistant U.S. Attorney, hereby certify that a true copy of the foregoing Government's Opposition to Defendant Ricardo Diaz's Motion for Leave to Subpoena Probate Records Relating to Child Support, was filed by the Electronic Court Filing System (ECF) and was served upon Terry S. Nagel, Esquire, Law Office of Terry Scott Nagel, 95 State Street, Suite 918, Springfield, MA 01103, as Counsel for the Defendant, Ricardo Diaz.

/s/ Andrew E. Lelling
Andrew E. Lelling
Sharron A. Kearney
Assistant U.S. Attorneys

Date: April 26, 2006

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

HAMPDEN, SS.

DOCKET NO. 89W0017

MASSACHUSETTS DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT DIVISION

on behalf of

DEPARTMENT OF TRANSITIONAL ASSISTANCE

and Alpha Company

Plaintiff

JULIAN RIOS

v.

Defendant

COMPLAINT FOR
MODIFICATION

1. The Child Support Enforcement Division of the Massachusetts Department of Revenue brings this complaint pursuant to G. L. c. 119A, § 3 on behalf of the party(ies) named above.
2. This Court, on 08/26/1999 ordered that the defendant pay child support in the following amount:

\$35.00 to be paid WEEKLY
Docket No.: 89W0017
3. There is an inconsistency between the amount of the existing order and the amount that would result from application of the Massachusetts Child Support Guidelines and/or there is a need to provide health insurance or other health care coverage for the benefit of the dependent child(ren). G. L. c. 119A, § 13.
4. Wherefore, the Massachusetts Department of Revenue requests that the Court order that the judgment indicated above be modified by entering a judgment ordering the defendant to:

☒ pay child support in an increased amount consistent with the Massachusetts Child Support Guidelines;

☒ provide health insurance or other health care coverage immediately for the benefit of the child(ren), if such insurance or coverage is available at a reasonable cost, or if it is currently unavailable, when it becomes available at a reasonable cost;

and further that this Court order such other relief as the Court deems appropriate.

MASSACHUSETTS DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT DIVISION

By its attorney,

3/7/06
Date

Daniel Scully
DANIEL SCULLY
COUNSEL TO THE COMMISSIONER
115 STATE ST
SPRINGFIELD, MA 01103-1931
(413)784-1025

COMMONWEALTH OF MASSACHUSETTS
TRIAL DEPARTMENT
THE PROBATE AND FAMILY COURT DEPARTMENT

Hampden, ss.

DOCKET NO. 89W 0017

MASSACHUSETTS DEPARTMENT OF REVENUE)
CHILD SUPPORT ENFORCEMENT DIVISION)

on behalf of:

Alba Roman and the

Department of Transitional Assistance

Plaintiff

COMPLAINT FOR
CIVIL CONTEMPT

Julian Rios

Defendant

1. The Child Support Enforcement Division of the Massachusetts Department of Revenue brings this complaint pursuant to G.L. c. 119A, sec. 3 on behalf of the parties named above.

2. The plaintiff is:

Alba Roman

c/o DOR/CSE

115 State Street

Springfield, MA 01103

3. The defendant is:

Julian Rios

4. By order of the Court dated August 18, 1989, the defendant was ordered:

☒ to pay support for the dependent child in the sum of \$35.00 WEEKLY

☐ to provide health insurance or other health care coverage for the benefit of the dependent child

and said order is still in force.

5. The defendant has not obeyed that order and

☒ is in the aggregate more than four weeks in arrears of court-ordered child support payments

☒ there now remains due and unpaid the amount indicated below plus such further amounts as may accrue up to the date of hearing:

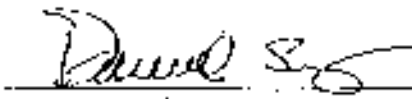
☐ has failed to provide health insurance or other health care coverage for the benefit of the dependent child.

Amount owed: \$25,249.08 plus penalties and interest as of October 21, 2005 (this amount represents arrears which accumulated during the time period that the dependent child was residing with his paternal relative and then with the mother)

Wherefore, the Massachusetts Department of Revenue requests that the defendant be required to appear before this Court to show cause why said defendant should not be adjudged in contempt of Court and for such other relief as to said Court may order.

Dated: ~~October 25, 2005~~

2/1/06


Daniel R. Scully
Counsel to the Commissioner
DOR/CSE
115 State Street
Springfield, MA 01103
(413) 784-1025

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

HAMPDEN Division

Docket No. 876 12014

Domestic Relations Summons

Dept. of Probate and Family Court
Attn: [unclear] Plaintiff
and [unclear]
[unclear] Defendant

To the above named Defendant:

You are hereby summoned and required to serve upon Daniel Scully

plaintiff's attorney whose address is 60 State St. 115 State St. 115 State St.

5475 MA 01103 a copy of your answer to the complaint for modification
(type of action)

which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, the Court will proceed in the hearing and adjudication of this action. You are also required to file your answer to the complaint in the office of the Register of this Court at Springfield either before service upon plaintiff's attorney or within a reasonable time thereafter.

Witness David M. Fuller Esquire, First Justice of said Court

at SPRINGFIELD, this 15th day of

March, 2006

Thomas P. Monasty, Jr.
 Register of Probate

ACCEPTANCE OF SERVICE

I, _____, the above named Defendant hereby accept service of this summons and understand that judgment may be rendered against me in accordance with the complaint a copy of which I have received this day.

Date _____ Signature of Defendant

NOTARIZATION

ss _____ Date _____

I then personally appeared the above named _____

who made oath that the foregoing acceptance was his free act and deed.

Signature of Notary Public _____

Print Name _____

My Commission Expires _____

Commonwealth of Massachusetts
The Trial Court

HAMPDEN Division

Probate and Family Court Department

Docket No. _____

Proof Of Service

I hereby certify and return that on _____, 20____, I served a copy of the within summons, together with a copy of the complaint in this action upon the within named defendant by _____.

Date _____

Signed under the penalties of perjury.

Date of Service _____

Signature of officer or other server.

Note: Service of process must comply with Massachusetts Rules of Domestic Relations Procedure Rule 4.

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

HAMPDEN Division

Docket No. 876-0271

Contempt Summons

D. of Probate, Case No.
Alba Glorioso Plaintiff
and U.S. District
Juliana Rios Defendant

To the above named Defendant:

You are ordered to appear at a Probate and Family Court to be held at Springfield

in said County of Hampden on April 6 2006
at 8:30 AM in the forenoon to show cause why you should not be held in civil and/or criminal
contempt, the penalty for which may be a jail sentence.

You are hereby summoned and required to serve upon

Denise Scully
40 Doe Lane plaintiff's attorney whose address is 115 State
Street Springfield MA 01103

your answer, if any, to the complaint which is herewith served upon you, within 7 days after service of this sum-
mons upon you, exclusive of the day of service. You are also required to file your answer, if any, to the complaint
in the office of the Registrar of this Court at Springfield
either before service upon plaintiff's attorney or within a reasonable time thereafter.

Failure to appear on this date may result in the issuance of an order for your arrest.

Witness David M. Puller , Esquire, First Justice of saidCourt at SpringfieldThis 26th day of April 2006

Thomas P. Marvitz Jr.
Registrar of Probate

Commonwealth of Massachusetts
- The Trial Court
Probate and Family Court Department

HAMPDEN Division

Docket No. _____

Contempt Summons

_____, Plaintiff

v.

_____, Defendant

Return Of Service

I certify under the penalties of perjury that on _____, 20____, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within named defendant by:

Date _____

Signature _____

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT DIVISION
115 STATE STREET
SPRINGFIELD, MA 01103

NOTICE OF ADDRESS/EMPLOYER CHANGE

NAME: JULIAN RIOS

ADDRESS: [REDACTED]

Re. Massachusetts Department of Revenue, Child Support Enforcement Division on behalf of
ALBA ROMAN and the DTA, Plaintiff v. JULIAN RIOS, Defendant

DOCKET NO: 89W0017

Dear Sir/Madam,

You have been served with a summons and complaint. As stated in the summons, you have twenty days from the receipt of service to file an answer to this complaint with the Hampden County Probate Court, 50 State Street, Springfield, MA 01103 and, at the same time, to send me a copy of your answer at the address above.

The Summons and Complaint have been served upon you as a notification of the action filed in Probate Court. The Department of Revenue will send you notification of the court date for a hearing on the Complaint by first class mail as soon as a date has been set.

If you have received a Contempt Summons along with your Complaint, your court date and time have already been assigned, see the front of the Contempt Summons.

Please be informed that you are responsible to advise both the Court and the Department of Revenue in writing of any change in your address or employer during this legal action.

Also, please be informed that if you fail to notify the Department of Revenue or the Court in the event you change your address or employer, the Department of Revenue will go forward in presenting this case at court.

Very truly yours,

Legal Department

IMPORTANTE: POR FAVOR HAGA TRADUCIR ESTE DOCUMENTO
IMMEDIATAMENTE

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT DIVISION
115 STATE STREET
SPRINGFIELD, MA 01103

NOTICE OF ADDRESS/EMPLOYER CHANGE

NAME: JULIAN RIOS

ADDRESS: [REDACTED]

Re: Massachusetts Department of Revenue, Child Support Enforcement Division on behalf of
ALBA ROMAN and the DTA, Plaintiff v. JULIAN RIOS, Defendant

DOCKET NO. 89W0017

Dear Sir/Madam:

You have been served with a summons and complaint. As stated in the summons, you have twenty days from the receipt of service to file an answer to this complaint with the Hampden County Probate Court, 50 State Street, Springfield, MA 01103 and, at the same time, to send me a copy of your answer at the address above.

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Very truly yours,

Legal Department

IMPORTANTE: POR FAVOR HAGAN TRADUCIR ESTE DOCUMENTO
INMEDIATAMENTE